



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

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Director

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January 31, 2007

Mr. J. Robert Hume  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
Norfolk District Regulatory Branch  
803 Front Street, Fort Norfolk  
Norfolk, Virginia 23510-1096

### **RE: Continued Approval of Use of Virginia Aquatic Resources Trust Fund until June 30, 2008**

Dear Mr. Hume:

We appreciate the efforts by the Norfolk District Corps of Engineers (the Corps) and The Nature Conservancy (TNC) to administer and implement the Virginia Aquatic Resources Trust Fund (the Fund) in such a manner that meets DEQ's statutory and regulatory requirements for wetland and stream compensation. In particular, we note that the Corps has greatly improved both the timeliness and usefulness of these annual reports to give DEQ and the public a more accurate picture of the Fund's successes. Since our approval letter of January 10, 2006, the Corps has incorporated the conditions we identified at that time, and we are pleased with the collaborative approach that the Corps, DEQ, and TNC have taken in recent months to coordinate project reviews.

On behalf of the State Water Control Board (the Board) and pursuant to Section 62.1-44.15:5D of the Code of Virginia and 9 VAC 25-210-115E, DEQ hereby approves the continued use of the Fund as an acceptable form of compensatory mitigation for impacts to state waters, including wetlands, permitted under Virginia Water Protection individual and general permits. According to Virginia Code Section 62.1-44.15:5D wetland compensation requirements may be met by "...contributing to a fund that is approved by the Board and is dedicated to achieving no net loss of wetland acreage and functions".

This approval is given in accordance with the requirements set forth in 9 VAC 25-210-115E and after reviewing the *Memorandum of Understanding between The Nature Conservancy and the*



*U.S. Army Corps of Engineers on operation of the Virginia Aquatic Resources Trust Fund* (dated August 18, 1995 and amended December 18, 2003); after reviewing the 2005 Final Report of fund activities (dated April 10, 2006); and after considering information discussed during a meeting between the Corps, DEQ, and The Nature Conservancy (on November 8, 2006).

A notice of intent to approve the Fund was published in the Virginia Register on October 30, 2006 to solicit public comments. The comment period closed on December 1, 2006 and two comments were submitted (a letter from The Nature Conservancy and an email from you). After considering statutory and regulatory requirements, and the information identified above, DEQ's approval for use of the Fund to satisfy compensation requirements for state permits is conditioned upon the following:

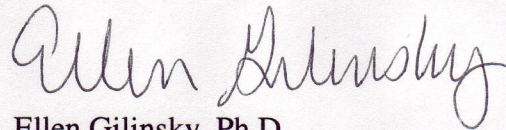
1. The Corps continues to demonstrate, at a minimum, a no net loss policy in terms of wetland or stream acreage and function by adoption of operational goals or objectives for restoration, creation, enhancement, or preservation of wetland or stream acreage and function, as specified in 9 VAC 25-210-115E.
2. The Corps continues to provide timely annual reports to the Board detailing contributions received and acreage and type of wetlands or streams restored, created, enhanced, or preserved in each river watershed (8-digit hydrologic unit code) receiving those contributions, as well as the mitigation credits contributed for each watershed of project impact, as specified in 9 VAC 25-210-115E.
3. DEQ continues to have the opportunity to review and comment on site selection and wetland and stream project plans prior to their approval; and monitoring reports on wetland and stream restoration sites are completed and available for review.
4. The Corps continues to disallow use of the Fund as a compensatory mitigation option in geographic areas having approved mitigation banks with appropriate credits available for purchase unless mitigation provided by the Fund would be preferable in terms of replacement of wetland or stream acreage and function. For this condition, DEQ considers "replacement of wetland or stream acreage and function" to include restoration, creation, and enhancement.
5. The Corps continues to use a fee mechanism ensuring that each contribution is adequate to compensate for the wetland or stream acreage and function lost in the impacted watershed, as specified in 9 VAC 25-210-115E. This fee mechanism should be structured to insure that any approved mitigation banks in the appropriate service area would not be economically disadvantaged by Fund contributions, and the fee mechanism structure should also be capable of adjustments to account for changes in the economy and market forces.

Approval of continued use of the Fund by DEQ's Office of Wetlands & Water Protection does not guarantee its use for compensation for a particular project's surface water impacts, including wetlands. Decisions on use of the Fund for a particular project are to be made on a case by case basis after considering the type and location of wetland or stream impacts and all appropriate compensation alternatives. DEQ reserves the right to deny use of the Fund for specific project impacts in watersheds that are not represented by active compensation sites and where approved mitigation bank credits or other compensation options are available.



Based upon comments received by TNC, we agree that the timing of the Corps' annual report and DEQ's approval of that report are somewhat disjunct. To place the annual report submittal and our approval on a more logical schedule, our approval is granted for an eighteen month period and will expire on June 30, 2008. Further approval of the Fund will be based upon meeting the commitments outlined above, including the continued demonstration of no net loss of wetland or stream acreage and function. We look forward to continuing the collaborative approaches with your staff and that of The Nature Conservancy on the review of new compensation sites, especially in those watersheds that are currently underrepresented by the Virginia Aquatic Resources Trust Fund.

Sincerely,

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.  
Director, Division of Water Quality

cc: Ms. Linda Crowe, The Nature Conservancy